Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from order No. 414 of 2003

United India Insurance Company Limited,
though its Divisional Manager,
Divisional Office, Nainital Road,
Ranipur Chowk, Hardwar.

..... Appellant.

Versus

1. Smt. Been Devi
   wife of late Narendra Singh Chauhan,
2. Master Rohi S/o late Sri Narendra Singh Chauhan,
3. Km.Rohini D/o late Sri Narendra Singh Chauhan,
4. Smt. Bhadi Devi wife of late Sri Lal Singh,
   All Residents of Arkhund, P.O. Arkhuna,
   Sub Tehsil-Jakholi, District-Rudraprayag.
5. Dines Singh Jhinkwan,
   R/o Village-Arkhund, P.O.Arkhund,
   Via Chandrapuri, Sub Tehsil-Jakholi,
   District : Rudraprayag (Owner)
6. Raghubir Singh S/o Harsh Singh,
   R/o Village-Kyark, P.O. Kyark,
   Tehsil-Ukhimath, District-Rudraprayag,
   (Driver of Vehicle).

.....Respondents.

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Sri D.S.Patni, learned counsel for the appellant,
Sri Pankaj Purohit, learned counsel for the respondents 1 to 4..

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Date: 2rd September, 2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the united India Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 16.09.2003 passed by the Motor Accident Claims Tribunal/District Judge, Rudraprayag in Motor Accident Claim Case No. 16 of 2003, Smt.Beena Devi and

others versus United India Insurance Company Ltd. and others, whereby the claim petition was decreed against the Opp.party-Untied India Insurance Company for a compensation of RS.2,25,000/- alongwith interest at the rate of 9% per annum from the date of claim petition till the date of actual payment.

2- Brief fact given rise to this appeal are that on 5.3.2003 at about 10.00 p.m. deceased Narendra Singh Chauhan was coming back to his house Arkhund (Rudraprayag) for Rishikesh alonwith his goods in Truck No. UP 07-C-8508. Due to rash and negligent driving by its driver the said vehicle met with an accident near Petrol Pump at Deoprayag in which deceased died on the spot. The deceased Narendra Singh was 34 years old at the time of accident and it was alleged that he was earning Rs. 3,000/- per month from the business. The claimants filed the claim petition for compensation of Rs. 6,50,000/- due to the death of Narendra Singh.

3- The opposite parties contested the claim petition before the Tribunal by filing their written statement. The Opp.party No.1 United India Insurance Company denied the allegations of the claim petition and alleged that the deceased was traveling without ticket and he was a gratuitous passenger. The Opp.party Nos. 2 & 3 filed their joint written statement admitted the accident on the aforesaid date time and place. They alleged that the said vehicle was insured with the Opp.party No.1 from 24.12.2002 to 23.12.2003. Hence the Insurance Company is liable to pay the amount of compensation. The Tribunal on the pleadings of the parties, framed the necessary issues and after recording the evidence of the parties, decreed the claim petition accordingly. Feeling aggrieved, the United India Insurance Company has come up in this appeal.

4- The learned counsel for the appellant pressed the appeal on the ground that the impugned award is contrary to facts and evidence on record. The deceased was traveling in a goods carrier vehicle without any ticket and as such he was a gratuitous passenger. Hence the appellant is not liable to pay any compensation. The learned Tribunal framed as many as six issues in this case and has discussed the case of the parties thoroughly. The claimants examined Smt.Beena Devi As P.W.1 in support of their case. She is widow of the deceased Narendra Singh. She has reiterated the facts of the claim petition in her evidence on oath and further stated that her husband was coming back to his house Arkhund (Rudraprayag) with the goods of his shop from Rishikesh on the ill fated day through Truck No. UP 07-C-8508. Due to rash and negligent driving by the driver of the said truck, it met with an accident near Petrol Pump, Deoprayag in which her husband died on the spot. The learned Tribunal while dealing with issue No.3 held that it is clear from the evidence of P.W.1 that the deceased was coming back with his goods in the aid truck which met with an accident. The said goods were also damaged in the accident. The claimants also filed the bills of purchase of goods dated 5.3.2003, which is paper No. 8-Ga/4 on record. The said documentary evidence shows that the deceased purchased Dhoti, Sari, Cloths, Steel items and cement on the said date. According to P.W.1 Smt.Beena Devi, the deceased was coming back frosm Rishikesh with the said goods as the owner of the goods in the ill fated truck. The Insurance Company did not adduce any evidence to rebut the evidence of P.W.1 Smt.Beena Devi. We find that the learned Tribunal did not commit any mistake in holding that the deceased as coming back with his goods as owner of the

goods in the said truck and he was not a gratuitous passenger. We are of the opinion that the findings given by the learned Tribunal are correct. We are fortified in our view by the verdict of the Apex Court in the case of ***Ramesh Kumar versus national Insurance Company Ltd. and others, reported in 2001 (3) Transport and Accidents Cases, 639 (Supreme Court)*** in which it has been held that compensation awarded in such cases where deceased or injured persons were traveling in a goods carriage who were owner or his authorised representative, the Insurance Company is liable to pay the compensation. However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal. Accordingly, the appeal fails on merit.

5- The appeal has no force and is hereby dismissed. The impugned award is affirmed. No order as to costs. The amount deposited in appeal, shall be remitted to the Tribunal concerned within three months.

(B.S. Verma, J.) **P.C.Verma,J.)**

02.09.2004
P.Singh